

ARKANSAS SUPREME COURT

No. CR 08-1223

LEWIS RICHARD
Appellant

v.

STATE OF ARKANSAS
Appellee

Opinion Delivered March 5, 2009

PRO SE MOTIONS FOR
APPOINTMENT OF COUNSEL AND
FOR EXTENSION OF BRIEF TIME
[CIRCUIT COURT OF HOWARD
COUNTY, CR 2007-161, CR 2007-162,
HON. CHARLES A. YEARGAN,
JUDGE]

APPEAL DISMISSED; MOTIONS
MOOT.

PER CURIAM

In 2008, appellant Lewis Richard, who is also known as Louis Richard, entered a plea of guilty in two separate criminal cases. In each case, appellant was charged with two counts of Class Y felony delivery of a controlled substance (crack cocaine). He was sentenced in each case to 180 months' imprisonment with twenty-four months suspended imposition of sentence. The sentences were to run concurrently to each other. No appeal was taken.

On June 30, 2008, appellant filed in both cases a pro se petition to correct an illegal sentence pursuant to Arkansas Code Annotated § 16-90-111 (1987). Therein, appellant complained that the sentences he received should have reflected that he was charged with four total counts of Class C felony delivery of a controlled substance. The trial court denied the petition and appellant has lodged an appeal here from the order.

Now before us are appellant's pro se motions for appointment of counsel and for an extension

of time to file his brief-in-chief. As appellant could not be successful on appeal, the appeal is dismissed and the motion is moot. An appeal from an order that denied a petition for postconviction relief will not be permitted to go forward where it is clear that the appellant could not prevail. *Womack v. State*, 368 Ark. 341, 245 S.W.3d 154 (2006) (per curiam).

Section 16-90-111 has been superseded to the extent that it conflicts with the time limitations for postconviction relief under Arkansas Rule of Criminal Procedure 37.2(c). *State v. Wilmoth*, 369 Ark. 346, 255 S.W.3d 419 (2007). Rule 37.2(c) provides that a petition under the rule must be filed within ninety days of the date the judgment was entered if the petitioner pleaded guilty. Here, appellant's petition was filed 117 days after the judgments were entered on March 6, 2008. Time limitations imposed in Rule 37.2(c) are jurisdictional in nature, and if they are not met, a trial court lacks jurisdiction to consider a petition pursuant to section 16-90-111. *State v. Wilmoth, supra*.

Appeal dismissed; motions moot.